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In The

Supreme Court of the United States

October Term, 1993

MARY E. HARRIS,

Petitioner,

v.

SKI PARK FARMS, INC.,

Respondent.

Petition For Writ Of Certiorari To The Washington State Supreme Court

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Harris' presentation of the question in this case is misleading. She incorrectly suggests that the resolution of this case revolves around federal statutes and federal issues. In fact, this is a simple matter of deed construction. The Washington State Court of Appeals and the Washington State Supreme Court addressed a basic, state law question: whether the parties intended a statutory warranty deed reserving and excepting a right-of-way to withhold a fee interest or a mere easement.

As recognized by the Washington State Supreme Court, the true question is as follows:

> Whether Opal Winkelman, by reserving and excepting a right-of-way within a statutory warranty deed, withheld a fee interest rather than a mere easement when she conveyed property to Petitioner Harris.

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SKI PARK FARMS, INC.,

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent Ski Park Farms, Inc. respectfully requests that this Court deny Harris' petition for writ of certiorari.

OPINIONS BELOW

Early in this case, both the Respondent and the Petitioner moved the Superior Court of the State of Washington in the County of Pierce for summary judgment on the merits. The Superior Court granted summary judgment to Harris. On appeal, the Court of Appeals of the State of Washington, Division II, reversed the Superior Court and directed that summary judgment be entered in favor of

the Respondent. Harris made a motion for reconsideration, but the court of appeals merely amended its opinion while reaffirming its decision. The Supreme Court of the State of Washington unanimously affirmed the decision of the state court of appeals. *See App. A.* The Washington State Supreme Court denied Harris' motion for reconsideration. A Judgment on Mandate was filed on June 10, 1993.

JURISDICTION

Harris correctly cites 28 U.S.C. § 1257(a) as the authority on which this Court ***could*** invoke its discretionary jurisdiction. However, Harris' misguided assertion that property rights vest pursuant to 42 Stat. 414, U.S.C. Title 43, Sec. 912 and 13 Stat. 358, stands as a thinly-veiled effort to create a federal issue out of a simple deed construction matter.

Petitioner has also misplaced relevant federal statutes under the heading of jurisdiction.

STATUTORY PROVISIONS INVOLVED

While Harris correctly cites the federal statute providing for the disposition of abandoned portions of rights of way granted to railroad companies, she inaccurately cites the authority of the Interstate Commerce Commission by including the currently repealed subsection (c): repealed by PUB.L. 96-448, Title IV, § 402(a)(2), Oct. 14,

1980, 94 Stat. 1941. Additionally, Harris neglected to include the Land Grant Act of 1864, 13 Stat. 365.

More fundamentally, however, these federal statutes cited above are only tangentially involved in this case. The question is one of deed interpretation, the resolution of which falls on the language of this deed, the intent of the parties, and the circumstances surrounding its creation.

STATEMENT OF THE CASE

Harris, in her petition now before this United States Supreme Court, has distorted the relationship of several federal elements involved in this case in an effort to entice this Court into invoking its discretionary jurisdiction. In truth, this is simply a deed interpretation case. As Harris stated in her brief to the Washington State Court of Appeals, Division II:

> "[I]n the final analysis, the dispute boils down to a simple matter of deed construction."

See App. B, at 13.

Harris is the founder and leader of a group called Citizens Against the Trail (CAT). This group was organized in the mid 1980s to oppose development of a 26-mile linear park in Pierce County along the abandoned railroad right of way of the Burlington Northern Railroad. Under her leadership, CAT has forced the Pierce County Parks Department to be involved in more than 30 public hearings.

CAT has unsuccessfully made claims to the Washington State Public Disclosure Commission against the Pierce County Parks Director, has literally cost the Parks Department hundreds of thousands of dollars in the public hearings and in the delays, and even brought the matter before the people of Pierce County in a referendum, a referendum which CAT lost. Throughout all of this, Mary Harris has been the primary spokesperson and leader of the CAT organization.

The route of the linear park, known as the Foothills Trail ("Trail"), was approved by Ordinance 87-124 by the Pierce County Council in 1987. Then, as if to poise for confrontation, Harris entered into a purchase and sale agreement with Opal Winkelman on July 24, 1987, for two small parcels of land bracketing the right of way. Within this purchase and sale agreement, which was drafted by Harris and her real estate agent, she incorrectly placed the term "easement" in the document in describing the railway right of way.

By the time the deal had been finalized on October 29, 1987, with the execution of a statutory warranty deed, the erroneous "easement" language had been stricken. Harris and her attorney reviewed the language of the warranty deed, with this conspicuous correction included in the legal description. Despite Harris' earlier apparent misconception in the purchase and sale agreement about the nature of the railroad right of way, no objections were raised by either Harris or her attorney about the terms of the deed, even though the deed now correctly indicated that the railroad's interest was not merely an "easement."

Harris paid $7,000 for these parcels, the total acreage of which was less than half an acre. The property along the right of way to the south was purchased for $143,000 by Ski Park Farms, Inc.,[1] a corporation owned by a small group of people. Ski Park Farms, from the very beginning, wanted to donate the portion of the right of way adjacent to their property to the county for its inclusion in the Trail.

Harris, in an attempt to stop the Trail, made a claim to all of the right of way located in the quarter section in which her property was located. This included almost a quarter of a mile of right of way, far removed from the Harris property.

The map used by the state appellate lower courts is included in the Appendix. *App. C, at 20.* This map differs from the map included in the Petitioner's brief. As the map used by the state courts accurately reflects, Ski Park Farms did not claim or quiet title to that portion of the right of way located adjacent to the Harris properties. *See App. E* for the map illustrating the legal description included in the Judgment on Mandate.

Harris also engages in what can be best termed a *reductio ad absurdem* in regard to the amount of money Ski Park Farms paid Winkelman for the quitclaim deed covering the right of way. *See Petition, at 7.* Based on some undefined equation, Harris mysteriously arrives at a low figure as the amount paid by Ski Park Farms for the

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[1] In accordance with United States Supreme Court Rule 29.1, Ski Park Farms, Inc., has no parent or subsidiary corporations.

disputed right of way. Without engaging in the same misleading calculus, Harris' attempt only underscores the fact that she paid $7,000 for her remote parcels of land and Ski Park Farms paid $143,000 for its land adjacent to the disputed area.

This disputed portion of the right of way is important, not because it is a valuable real estate investment, but because of the need for the Trail to be continuous. The disputed area also contains a trestle over a very beautiful wetlands. Harris' sole intent has been to remove the trestle and stifle the efforts to include a vitally important part of the Trail. Harris began to dismantle the trestle in a salvage operation in January of 1988. *See Petition, at 9.*

This Court should not be misguided by Harris' attempts to create a federal issue out of this case. As her own words state, this has always been a case of deed interpretation. Her case was heard by both the Washington State Court of Appeals and the Washington State Supreme Court. She moved for reconsideration each time, and ultimately failed each time. Extensive briefings were done by both sides, with oral arguments before both courts.

This latest petition is simply another feeble attempt on her part to destroy the opportunity for the people of Pierce County to establish a linear park which would serve all of the people of Pierce County, as well as those of other counties, and preserve a green belt for some of the most beautiful portions of our county.

REASONS FOR DENYING THE PETITION

Harris' Petition for Certiorari should be denied because the Washington State Supreme Court correctly held that the statutory warranty deed from Winkelman to Harris excepted a fee interest in the abandoned railroad right of way property. This exception allowed Winkelman to transfer the right of way property to Ski Park Farms.

The decision of the state supreme court underscores the fact that this issue, a simple deed construction problem, completely lacks the requisite significance to invoke the discretionary jurisdiction of this Court. Petitioner has crafted the appearance of a federal concern, but this is a ruse. The federal elements of this case have never really been disputed. In fact, little in this case has been disputed other than the interpretation of the deed and the intent of the parties. These issues simply do not merit the attention of this esteemed Court.

The lower courts' ruling that this unique fact pattern resulted in a fee interest having been reserved and excepted from the Harris purchase will have no cognizable impact on anyone other than the parties. Harris attempted to "land grab" the right of way which no federal statute, nor any case law, would authorize her to claim. Her reliance now on federal statutes constitutes yet another misrepresentation to this Court.

1. The federal elements involved in this case are only tangentially related to the interpretation of the deed and do not raise important federal issues.

The Harris Petition displays a fundamental misunderstanding of the federal law involved. This is evident from the initial argument that the limited fee concept has become "obsolete" (*see Petition, at 12*) to its apparent belief that the Thirteenth Amendment of the United States Constitution reads: "Section 1. Civil rights: . . . 'nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.' " (*See Petition, at 28*).

This misstatement of the law should be addressed according to Rule 15 of the Rules of the Supreme Court. The Thirteenth Amendment of the United States Constitution reads:

> Section 1. Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
>
> Section 2. Congress shall have power to enforce this article by appropriate legislation.

The language which Harris quoted comes from Section 1 of the Fourteenth Amendment of the United States Constitution. Similar misconstructions occur throughout the brief.

For example, Harris contends that the "evolution" of railroad right of way land grants stands as a reason that this case deserves notice by this Court. However, both the

state court of appeals and the state supreme court have stated that, under the ***particular circumstances surrounding the deed in this case,*** the deed conveyed to Harris withheld a fee interest to property that had once been a railroad right of way. This point deserves emphasis: this case involves highly-particularized facts unique to this dispute which dictated how the deed was interpreted by the state courts.

As the lower courts recognized, the evolving interpretation of the term "right of way" does not affect the nature of individual acquisitions of lands pursuant to the 1864 Land Grant Act.[2] This grant was a limited fee with a right of reverter, and the state supreme court determined that all conveyances by the Burlington Northern Railway and its predecessor in interest, the Northern Pacific Railway Company, preserved this limited fee. *See App. A.*

Harris also misdirects this Court by referring to the role of the Interstate Commerce Commission ("ICC") in this matter. No dispute has ever been raised previously about the ICC role, or rather lack of role, in this case.

On December 7, 1984, the ICC authorized Burlington Northern to abandon the right of way. The certificate issued by the ICC did not serve to effectuate an abandonment of Burlington Northern's interest in the right of way. Not only was this issue never contested, but this assertion is meaningless. The important point is that Burlington Northern then abandoned the right of way on February 15, 1985, pursuant to 43 U.S.C. §912. *See App. A-5.*

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[2] Land Grant Act of 1864, 13 Stat. 365.

As the lower courts recognized, Winkelman held title to the land subject to the right of way. And, although she was not aware of the abandonment, the title to the right of way vested in Winkelman with the abandonment pursuant to 43 U.S.C. §912. Title may also have reverted to Winkelman under state law. *See Roeder v. Burlington Northern, Inc.*, 105 Wash. 2d 269, 714 P.2d 1170 (1986). Under either the federal statute or state law, Winkelman possessed a fee interest at the time the warranty deed was conveyed to Harris.

2. The Washington State Supreme Court correctly interpreted the deed based on the particular language of the deed and the intent of the parties.

The Washington State Supreme Court based its decision on the plain language of the statutory warranty deed and the subsequent quitclaim deed of the reverted fee interest to Ski Park Farms. A full analysis relating to this interpretation of the deed will not be repeated here. It is amply covered in the record. *See App. A.*

It bears noting that the state supreme court simply held that the original reservation and exception of a right of way for the Northern Pacific Railroad reserved and excepted a fee interest in the property. All subsequent conveyances of the servient estate did not affect this fee interest.

The abandonment of the right of way by the railroad resulted in a reversion of the fee interest to Opal Winkelman, the owner of the property. Winkelman then conveyed by statutory deed a portion of the acreage to Petitioner Harris, reserving a fee interest in the railroad

right of way, and conveying the remainder of its property interest by quit claim deed to Ski Park Farms.

Aside from her unsupportable claim that limited fee interest railroad rights of way no longer exist, Harris has essentially staked her claim on the existence of the "easement" language which she had drafted into the preliminary purchase and sale agreement for the parcels of land northwest of the disputed area.

Both the state court of appeals and the state supreme court noted that the language of the purchase and sale agreement drafted by Harris and her agent carried little weight in assisting them in interpreting the intent of the parties. By the time the deal had been finalized with the execution of a statutory warranty deed, the erroneous "easement" language had been stricken. Harris and her attorney reviewed the language of the warranty deed, with this conspicuous correction, prior to the closing.

Despite Harris' misconception in the purchase and sale agreement about the nature of the railroad right of way, no objections were raised by either Harris or her attorney about the accurately revised terms of the deed. The deed at the time of the execution correctly indicated that the railroad's interest was not merely an "easement."

More importantly for purposes of this review, the "easement" argument involves questions of state law. No federal statutes or federal issues are implicated.

3. The interpretation of the deed lacks the sufficient public interest or federal importance elements required to merit invoking the discretionary jurisdiction of this Court.

Although the outcome of this particular case affects a portion of the Trail, the case itself does not involve a matter of public interest. This is simply a case involving a court interpretation of a particular deed and the intent of the parties to this deed.

The Harris Petition lacks the requisite "special and important reasons" which would call for the invocation of this Court's discretionary jurisdiction. While Harris' Petition has attempted to disguise this simple deed construction in federal drapery, the resolution of the matter does not involve any of the generally required characteristics of a case before this Court:

1. This case does not involve a decision by the United States Court of Appeals;

2. While this case does involve a decision by a state court of last resort, this court's decision does not involve a federal question of law. It merely resolves a deed construction dispute. It seems unfathomable that the peculiar fact pattern which dictated the resolution of this dispute would in any manner interest other courts of last resort or a United States Court of Appeals;

3. An interpretation of the statutory warranty deed involved in this fact-driven case does not raise potentially important questions of federal law which come before this Court, nor would an interpretation in any way conflict with decisions in the past by this Court.

In summary, the state court of appeals and the state supreme court correctly resolved this dispute. They accomplished this through the use of the basic legal principles, deed construction, and intent of the parties. This elementary matter simply does not rise to a level of importance sufficient to merit this Court's attention.

Harris misguides this Court by fabricating a federal appearance where none exists. She cites cases among various courts across the nation which have dealt, not with conflicting interpretations of a question of federal law, but with various resolutions of disputes driven by similarly unique fact patterns.

Disputes such as this one are unique because they deal with parties' intent and language in successive deeds which have been changing hands since the 19th-century. Simple deed constructions and interpretations of the intent of the parties should not waste the time of this Court.

Harris draws this Court's attention to the Interstate Commerce Commission in hopes of infusing this matter with a federal flavor. The ICC's role in this matter is inconsequential to the resolution of this matter, as is readily apparent from the facts.

Harris even draws the United States Constitution into the fray in a desperate effort to intrigue this Court. Even though Harris displays an evident confusion regarding the content of the various amendments, neither the Thirteenth Amendment's prohibition against slavery nor the Fourteenth Amendment's protection against government deprivation of life, liberty, or property without due process has anything remotely to do with this case.

Finally, Harris turns this Court's attention to the inevitable in this matter: simple state law concerning deed construction and intent of the parties. Both the state court of appeals and the state supreme court adroitly applied these basic principles to the unique facts of this case.

CONCLUSION

For these reasons, Respondent Ski Park Farms, Inc., respectfully requests that this Court deny the Petition for Writ of Certiorari of Mary Harris.

DATED this 29th day of October, 1993.

Respectfully submitted,

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